



“Summary of article by Vicki Been: What’s Fairness Got To Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses” in Frontier Issues in Economic Thought, Volume 5: The Political Economy of Inequality. Island Press: Washington DC, 2000. pp. 255-259

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Certain kinds of facilities are often unwelcome as neighbors. Locally undesirable land uses (LULUs), including waste disposal sites, pollution generating factories, or nuclear power facilities, are often characterized by environmentally harmful effects. Prisons and even social service agencies such as drug and alcohol treatment centers or homeless shelters may also be considered undesirable. This is the well known as NIMBY - “not in my backyard” - phenomenon. Many environmental impacts are concentrated in the immediate neighborhood yet the benefits of a particular facility are shared by society as a whole. This creates a real dilemma about the fairness of locating a particular facility in a particular community. Using protests, lawsuits and lobbying efforts, advocates for environmental justice have called attention to the disproportionate presence of undesirable land uses in poor and minority communities.

The article summarized here argues that siting issues are difficult to resolve unless the decision is grounded in a particular theory of fairness. A number of theories may have resonance with a given situation, each one presenting a particular set of opportunities for solution; yet each theory also presents problems of a philosophical or pragmatic nature. The author surveys several theories of fairness as they apply to LULUs, working through the complex options and obstacles associated with each.

Environmental Justice

Evidence from a number of studies conducted on a national, regional or local basis suggests that a disproportionate number of undesirable facilities are located in poor or minority communities. However, the related claim that this is the result of discrimination in the decision where to site these operations has not, in most cases been studied directly. If the neighbors of undesirable facilities are disproportionately minority, it may be that these demographics played a role in the choice of sites. But it is also possible that these neighbors “moved to the nuisance.” Once an undesirable facility is sited, wealthier people may have moved away from undesirable locations, the presence of LULUs may have reduced property values, and the neighborhoods may therefore have become affordable for poorer and minority residents.

Whether the facilities were imposed on a minority neighborhood or minorities moved near the facility, it is appropriate for these communities to seek legislative redress of the unfair burden that LULUs now place on their neighborhoods. Although the ethical, legal, political, and practical problems involved in finding fair and workable solution are formidable, “[t]he

government must find a satisfactory answer, or else society will find itself in the stalemate that planners refer to as the ‘build absolutely nothing anywhere near anybody’ (BANANA) dilemma.” [1015]

Objections to Fair Siting Proposals

There are four general objections to the consideration of fairness in response to siting issues. One claims that proximity to undesirable facilities results from the dynamics of the housing market. Older factories and waste sites were located in central cities near transportation, markets and workers. As workers moved out of inner cities, poor people, often members of minority groups moved in. Related to this is the mobility issue which claims that in a free market, some people will be better able to distance themselves from LULUs than others and therefore, actions to promote fairness in the siting of facilities are fruitless. However, relocation costs and evidence that many LULUs do not dramatically lower property values, as is often feared, mean that neighborhoods may change slowly. Further, the government has an obligation to foster fairness even if the market may undo these effects

The aggregation objection holds that LULUs need to be considered within the context of all the benefits and burdens regularly allocated by society. A fourth objection is made by those who believe that the free market should distribute environmental quality in the same way it distributes amenities like proximity to a mountain stream. Many aspects of life are allocated to some extent by government - education, health care, military service, jury duty; advocated for “fair” siting the allocation of LULUs are analogous to these situations.

The Meaning of Fairness

Although environmental justice activists have not made explicit the underlying theories of fairness on which they base their claims, these theories must come into play in formulating resolutions to specific cases. Several of these theories will be discussed under three overarching categories: 1) fairness in the pattern of distribution; 2) fairness as internalization of costs; 3) fairness as process.

Fairness in the pattern of distribution might impose a proportional distribution of the burdens of LULUs throughout the population so that each neighborhood has the same number as every other one. However, this will still leave some individuals in closer proximity to the facilities than others. Suitable sites are not likely to be distributed evenhandedly so proportional distribution might compromise other siting criteria. Because different facilities have different effects, it is difficult to balance burdens. Neighborhoods are difficult to define and the effects of many LULUs are not confined to neighborhood boundaries.

Many academics favor compensation schemes, but others criticize them as immoral. Such schemes place the less fortunate at risk while those who can afford to escape do so. Compensation commodifies life, health, safety and human dignity. When a community already suffers from inequality, it is questionable if it can truly make a voluntary decision about compensation. There are also pragmatic obstacles to translating risk into monetary terms, among them problems of measurement and achieving consensus. There are also problems in

determining who should receive compensation, who receives offsetting benefits (e.g., employment), and how to compensate future residents.

Progressive siting would allocate more of the burden of LULUs to advantaged neighborhoods either by physically siting facilities there or by requiring wealthy communities to bear a larger share of compensation costs. Progressive siting would redress both past and present disadvantages. Poor communities are likely to be poorer than others in health as well as wealth and therefore, more at risk from the effects of environmental toxins. Putting LULUs in wealthier communities may create incentives for society to reduce its need for such facilities.

Internalizing the costs of LULUs puts the burden on those who benefit from them and also encourages greater efficiencies. Unfortunately, it is not always possible to match benefit and burden precisely. Cost internalization is also more compatible with compensation schemes than with physical siting schemes, yet proponents of internalization often oppose compensation on moral grounds.

Fairness as process demands that the decisions about siting be free of discrimination and that they treat all people involved as equals. Seemingly neutral procedures like cost-benefit analysis can contain hidden biases. For example, the cost effectiveness of siting a particular facility may depend on land values, which are higher in more privileged communities.

Legislative Strategies

State and local governments and legislative proposals at the federal level have adopted five strategies for fostering fairness in siting: dispersion, impact statement, fair share, hybrid impact statement\fair share, and suspect class.

The dispersion approach has been applied mainly to the siting of group homes in the wake of deinstitutionalization of mental hospitals, but also to environmental hazards. It prohibits concentration of LULUs in any one neighborhood, however it does not specify any particular consideration between white and minority communities.

Impact statements mandate that local authorities either monitor the status of LULUs in the area or develop analysis of the impact of proposed sites on socioeconomic factors in the area. Impact statements take into account the existing burden and potential impact of undesirable facilities on the community. However there is lack of consistency in measurement and lack of clear definition of impacts in these mandates.

The fair share approach was developed with respect to low and moderate income housing to ensure that communities receive a fair share of such housing on one hand, and a fair distribution of costs on the other. Determining costs and benefits and weighting factors such as need or suitability make this a very complex process, subject to bias and resistance.

New York City incorporated a hybrid fair share\impact statement approach in its 1989 city charter. This has become an acclaimed model in urban planning circles. It requires notification to communities well in advance of changes to city facilities and establishes vehicles for feedback

and participation on the part of city residents and community leaders. The fair share criteria mandate that the city consider compatibility with existing programs and facilities; potential adverse effects on neighborhood character; cost-effectiveness; and consistency with the mayor's annual Statement of Needs. There are shortcomings to this approach. For instance, the compatibility criterion may tend to funnel LULUs into neighborhoods where they are already concentrated, and while impact statements must be drawn up, there is no mandate that they be followed. Still, this is an innovative and promising program.

The suspect class approach is embodied in proposals to Congress similar to Civil Rights legislation in specifying certain classes of people for protection. One such proposal is narrowly confined to prevention of racial discrimination in the siting of LULUs. Another would prohibit facilities that threaten the health or environmental quality of poor or minority communities.

Abstract calls for fair siting in the absence of a theory of fairness offer no guidance about "what fair siting will look like in practice or ... how effective proposals to ensure fair siting will be." [1085] Working through all the conceptual and pragmatic problems attendant on each particular approach to fairness is difficult, but in the end will lead to sounder solutions.